

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Civil Writ Petition No. 1130 of 2004 (S/S)

Qurban Ali Petitioner

Versus

Union of India & others Respondents

Mr. B.P. Nautiyal / H.M. Bhatia, learned counsel for the petitioner.
Learned Central Government Standing Counsel for the respondent.

Hon'ble P.C. Pant, J.

Heard learned counsel for the petitioner and perused the affidavit and annexures annexed to the writ petition.

2) By means of this writ petition order of dismissal from the service has been challenged.

3) It appears that earlier also the petitioner filed a writ petition No. 28512 of 2000 before the Allahabad High Court which was disposed of on 06.07.2000 (copy Annexure-4 to the writ petition). In compliance of said order the Chief of Army Staff has himself disposed of the appeal of the petitioner on 19th December 2000 by a speaking order, which reads as under:

“1. WHEREAS the Hon'ble Allahabad High Court vide its Order, dated 06 Jul 2000, in the Writ Petition No. 28512 of 2000 filed by No. 1489251A Ex Spr /Cook(U) Kurban Ali, has directed consideration and disposal of the petitions, dated 26 Aug 97 and 15 Dec 97 submitted by the said Ex Spr/Cook(U) Kurban Ali.

2. AND WHEREAS the examination of the record reveals that the petition dated 26 Aug 97, said to

have been forwarded by the Petitioner to the GOC-in-C, West Comd, has not been received either at HQ West Comd or at this HQ, however, the petition at Annex 2 to the Writ Petition ref above has been considered and disposed of by this Order.

3. *AND WHEREAS in deference to the order ibid of the Hon'ble High Court, I have carefully examined the petitions dated 26 Aug 97 and 15 Dec 97 of the said individual in light of all available records. The Summary Court Martial (SCM) proceedings reveal that the petitioner had overstayed leave from 08 Mar 96 to 16 Jun 96 and again absented himself without leave from 18 Jun 96 to 15 Oct 96. He pleaded guilty to both the charges preferred against him at the SCM. As per the Army Rules, no evidence is required to be recorded when the accused pleads guilty to the charge(s) at the Court Martial. However, in view of the statements made at the Summary of Evidence and the trial to the effect that he had acted due to mental instability, the Court, apparently, in terms of Army Rules 116(4), recorded the evidence of three prosecution witnesses to satisfy itself of the guilt of the accused. The record also brings out that the Petitioner was provided with the services of Capt Ganga Wadhera of 56 Engr Regt as "friend of the accuse" at his trial. He had also been afforded full opportunity to make a statement, produce character witnesses and defence, witnesses, which was duly utilized by him. The record further shows that the SCM proceedings were conducted in most fair manner and in accordance with the Army Act and Army Rules and that there is no legal infirmity in the proceedings.*

4. *AND IN PURSUANCE WHEREOF, there is no illegality in the conduct of the impugned SCM proceedings. The petition are devoid of any merit.*

5. *Now, therefore, I hereby reject the petitions dated 26 Aug 97 and 15 Dec 97, submitted by the above named individual.*

4) Thereafter, a mercy petition filed before the President of India has also disposed of in the matter a copy of which is annexed as Annexure- 8 to the writ petition. That too has been rejected by a speaking order. All the grounds mentioned in the writ petition are already covered and this Court is not inclined to interfere again in the second round of litigation on the same issues.

5) The writ petition is devoid of merits and is accordingly dismissed in limine.

(P.C.Pant, J.)

Dt.: 1st October, 2004

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